



COMMONWEALTH OF PUERTO RICO  
OFFICE OF THE GOVERNOR  
PLANNING BOARD

MINILLAS GOVERNMENT CENTER  
DE DIEGO AVE., STOP 22, SANTURCE  
P. O. BOX 41119, SAN JUAN, PUERTO RICO 00940-1119

October 29, 2004

Mr. James Walpole  
General Counsel  
U.S. Department of Commerce  
National Oceanic and Atmospheric  
Administration  
1305 East-West Highway  
Room 611  
Silver Spring, Maryland 20910

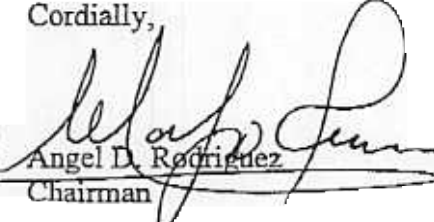
**Consistency Determination Appeal**  
**CZ-2001-0529-117**  
**Villa Marina Yacht Harbour**  
**Fajardo, Puerto Rico**

Dear Mr. Walpole:

Thank you for the granted extension to submit our brief regarding the appeal of the case at reference. Enclosed you will find the Puerto Rico Planning Board's reply brief for the case at reference.

If you have any question or need more information about this matter do not hesitate to contact Ms. Rose A. Ortiz at (787)-723-6200 ext. 2020 or (787)-726-0289.

Cordially,

*for:*   
Angel D. Rodríguez  
Chairman

Enclosures

c: Mrs. Vivian Gerena, USACE  
Mr. Eduardo Ferrer, Villa Marina Yacht Harbour Inc.

**Puerto Rico Planning Board's Reply Brief**  
**Case Number CZ-2001-0529-117**  
**Apellant: Villa Marina Yacht Harbour Inc.**  
**Lawyer: Eduardo J. Ferrer Ramirez**

The Puerto Rico Planning Board expresses the following arguments as a reply brief for the case at reference:

- ❖ We would like to clarify that the application for Villa Marina Yacht Harbor was submitted at the Puerto Rico Planning Board on May 29, 2001 (See enclosure number 1). According to the established state procedure, the applicant submitted the application at the Department of Natural and Environmental Resources on April 3, 2001 and the application was received in the Secretary Office of the PRPB on May 29, 2001. The PRPB answered on June 11, 2001 (enclosure number 2) in compliance with §930.60.
- ❖ According to June 11, 2001 letter, the Puerto Rico Planning Board declared the application as incomplete and required the following information in order to begin the evaluation period:
  - 1- Copy of the Environmental Quality Board's letter endorsing the Environmental Impact Assessment Document (EIA).
  - 2- Agencies endorsement or comments from the agencies about the EIA document.
  - 3- Include current studies in order to prove that the breakwater is necessary, its design is adequate and that it will not have a negative impact on the other marinas within the project area.
  - 4- Diagram done by a surveyor showing the dimensions and location of the proposed expansion in relation to the approved Sea Lovers Marina expansion.
- ❖ Section 930.58 of 15 CFR Part 930 clearly establishes that "Necessary data and information may include State or local government permits or permit applications which are required for the proposed activity". The Puerto Rico Coastal Zone Management Program at appendix B includes Law Number 9 of June 18, 1970 as one of the means through which the Puerto Rico Commonwealth exerts control and protects the coastal resources. Therefore the PRPB request for compliance with Article 4c of this law is in compliance with Section 930.58 of the Federal Consistency Regulations.
- ❖ It was not the responsibility of the Puerto Rico Planning Board to procure the endorsement according to Article 4c of the P.R. Environmental Policy Law (Law Number 9 of June 18, 1970) because the responsible agency for administering and controlling the activities and development projects at Public Domain Lands is the Department of Natural and Environmental Resources. It is clear according to evidence submitted in the initial PRPB's brief, that the DNER has been requesting information from the applicant for completing the required Environmental Document, since November 23, 1999.

**Puerto Rico Planning Board Reply Brief**  
**Case Number: CZ-2001-0529-117**  
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Therefore, it is responsibility of the applicant to comply with DNER's requirements. The applicant has to follow up the process for authorization of the activity within the DNER in order to procure that the Environmental Document is submitted by this agency to the Environmental Quality Board (EQB) for the required compliance with Law Number 9.

### **Conclusion**

Considering the above mentioned facts, the PR Planning Board sustains the position that in order to make the proposed expansion consistent with the PR Coastal Zone Management Program, the applicant must:

- 1- Update the Environmental Impact Assessment (EIA) document by including the most recently submitted information both in the US Army Corps of Engineers and the P.R. Planning Board and fulfill the DNER requirements to complete the EIA.
- 2- Obtain the EQB endorsement about compliance with the Article 4c of the Environmental Policy Law. This process shall be completed within the review process of the DNER permit for Submerged Land Use Concession. The DNER shall be the proponent agency for this proposal.

The Puerto Rico Planning Board cannot evaluate the consistency of the proposed expansion until the applicant complies with established state procedure to evaluate the viability of this kind of project.

ENCLOSURE 1

# FEDERAL AND COMMONWEALTH JOINT PERMIT APPLICATION FORM FOR WATER RESOURCE ALTERATIONS IN WATERS, INCLUDING WETLANDS, OF PUERTO RICO

## FOR AGENCY USE ONLY

USACE Application # <u>C2-2001-0529-117</u>	Date Application Received _____
PRPB CZM Application # _____	Date Application Received _____
EQB WQC Application # _____	Date Application Received _____
DNER SLUC Application # _____	Date Application Received _____
DNER WF Application # _____	Date Application Received _____
DNER WC&WI Application # _____	Date Application Received _____
DNER ECEFP Application # _____	Date Application Received _____

Government Agency Acting as Sponsor in accordance with Section 4C of Law:

## 1. Type of Permit or Certification Requested (check all that apply):

- ☒ U.S. Army Corps of Engineers Permit to place Fill in Waters of the U.S. (Section 404), Work in Navigable Waters of the U.S. (Section 10) and/or Transport Dredged Material for Ocean Disposal (Section 103)
- ☒ CZM Certification
- ☐ Water Quality Certification
- ☒ Submerged Land Use Concession
- ☐ Water Franchises
- ☐ Well Construction and Water Intakes
- ☐ Earth Crust Extraction Formal Permit - include information requested in Enclosure A

## 2. Type of activity for which you are applying (check all that apply)

- ☒ New construction or work including dredging or filling in, on or over waters of the U.S., including wetlands, navigable waters and/or other surface waters.
- ☐ Alteration or operation of an existing work, construction or system which was not previously permitted.
- ☐ Modification of previously permitted project. Provide previous permit numbers.
- ☐ Removal, Extraction, Excavation and dredging of earth crust components.
- ☐ Extraction of water

## 3. Applicant's Name and Address

Name Villa Marina Yacht Harbor, Inc.

Last Name, First Name (if individual). Corporate Name. Name of Government Agency

Address P.O. box 9020485Municipality San Juan, Puerto Rico, Zip 00902-0485Telephone 721-8062 Fax 721-3127

Name of the Property Owner (If different from applicant): \_\_\_\_\_

(If applicant not the owner, explain contractual relationships. Include Owner's address): \_\_\_\_\_

SOL-CONJ.

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DINA

3 APR 2001

June 11, 2001

Gustavo Adolfo Rodríguez  
Environmental Permitting Inc.  
PO Box 362893  
San Juan, Puerto Rico 00936-2893

Federal Consistency Certification  
CZ-2001-0529-117  
Villa Marina Yacht Harbor Expansion  
Sardinera Ward, Fajardo

Dear Mr. Rodríguez:

We have received your application of Federal Consistency Certificate with the Puerto Rico Coastal Zone Management Program for the project at reference. After reviewing it we have found that it lacks of necessary information in order to be evaluated according to section 930.58 of the Federal Consistency Procedures. Therefore the following information shall be submitted:

- 1- Copy of the Environmental Quality Board's letter endorsing the Environmental Impact Assessment Document (EIA).
- 2- Agencies endorsement or comments from the agencies about the EIA document.
- 3- Include current studies in order to prove that the breakwater is necessary, its design is adequate and that it will not have a negative impact on the other marinas within the project area.
- 4- Diagram done by a surveyor showing the dimensions and location of the proposed expansion in relation to the approved Sea Lovers Marina expansion.

According to Federal Consistency Procedures the review period of this application will not begin until the previously mentioned information is submitted for which 15 days from the date of this letter are granted.

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**Federal Consistency Certificate**  
**CZ-2001-0529-117**

**For any question regarding the above matters, please communicate with Ms. Rose A. Ortiz at (787)726-0289. With nothing else about this particular matter we will be waiting for your response.**

**Cordially,**

**Eva Tamayo Matos**  
**Director**  
**Land Use Planning Subprogram**

**c: Mr. Edwin Muñiz, USACE**  
**Mrs. Wanda Garcia, EQB**  
**Mr. Celso Rossy, DNER**

**RAO/mir**



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CENTRO GUBERNAMENTAL MINILLAS  
AVE. DE DIEGO, PDA. 22, SANTURCE  
PO Box 41119, SAN JUAN, PUERTO RICO 000940-1119

11 de junio de 2001

Gustavo Adolfo Rodríguez  
Environmental Permitting Inc.  
P.O. Box 362893  
San Juan Puerto Rico 00936-2893

Certificación de Compatibilidad Federal  
CZ-2001-0529-117  
Expansión de Villa Marina Harbor  
Sardinera, Fajardo

Estimado señor Rodríguez:

Hemos recibido la solicitud de determinación de compatibilidad federal con el Programa de Manejo de la Zona Costanera, para el proyecto en epígrafe. Al revisar la misma hemos encontrado que carece de información necesaria para ser evaluada, según se describe en la Sección 930.58 de los Procedimientos de Compatibilidad Federal. A tales efectos deberá someter la siguiente información:

1. Copia de la carta de la Junta de Calidad Ambiental endosando la Declaración de Impacto Ambiental (DIA).
2. Cartas de endoso o comentarios sobre la DIA por parte de las agencias.
3. Incluir estudios de corriente que prueben que el rompeolas es necesario, que el diseño del mismo es adecuado y que no afectará adversamente a las marinas ya existentes en el área.
4. Diagrama hecho por un agrimensurador que muestre las dimensiones y ubicación de la expansión propuesta con relación a la expansión aprobada de la Marina Sea Lovers.

De acuerdo a los Procedimientos de Compatibilidad Federal el período de revisión de esta solicitud no comenzará hasta tanto se someta la información antes indicada, para la cual se le han concedido quince (15) días a partir de la fecha de esta comunicación.

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**Certificación de Compatibilidad Federal**  
**CZ-2001-0529-117**

Para cualquier pregunta referente a este asunto favor de comunicarse con la Srta. Rose A. Ortiz al 726-0289. Esperando su respuesta a lo aquí señalado y sin nada más sobre el particular quedo de usted.

Cordialmente,



Eva Tamayo  
Directora  
Subprograma de Planes de Usos  
de Terrenos

c: Sr. Edwin Muñoz, CoE  
Sra. Wanda García, JCA  
Sra. Celso Rossy, DRNA

ET/RAO/mfr